

Case Brief: Fintree Finance Private Ltd. v. Embifi Global Services Private Limited

Introduction

The order in Fintree Finance Private Ltd. v. Embifi Global Services Private Limited was passed by the High Court of Judicature at Bombay ("**Court**") in Commercial Arbitration Application (L) No. 10523 of 2026 by Hon'ble Mr. Justice Sandeep V. Marne. An application was filed under Section 11 of the Arbitration and Conciliation Act, 1996 ("**Act**") seeking appointment of an arbitrator for adjudication of disputes arising out of a Master Service Agreement ("**Agreement**"). The Court examined whether the application was premature on account of the applicant's alleged non-compliance with the pre-arbitration dispute resolution procedure prescribed under Clause 21 of the Agreement.

Factual Background

Fintree Finance Private Ltd. ("**Fintree**") and Embifi Global Services Private Limited ("**Embifi**") entered into the Agreement, which contained an arbitration clause providing for adjudication of disputes by a sole arbitrator to be appointed by both the parties. Fintree issued a letter dated 23 June 2025 calling upon Embifi to cure certain breaches under the Agreement within a period of 30 days. However, Fintree invoked the arbitration clause vide a notice dated 18 September 2025, nominating Mr. Chinmaye Gupte, Advocate as an arbitrator. Upon receipt of the notice, Embifi disputed the appointment and instead nominated Mr. Himanshu Jangid, Advocate, as the sole arbitrator. Disagreeing, Fintree filed an application under Section 11(6) of the Act before the Court seeking appointment of an arbitrator.

Submissions of the Parties

Embifi submitted that the application was premature as Fintree had not followed the procedure envisaged under Clause 21 of the Agreement. According to Embifi, Fintree ought to have first issued a dispute notice, waited for a period of 30 days after service of the dispute notice and thereafter, invoked arbitration by issuance of a fresh notice. However, instead of following this agreed procedure, Fintree had directly invoked the arbitration clause by notice dated 18 September 2025.

Per contra, Fintree drew the attention of the Court to the letter dated 23 June 2025 by which Embifi was called upon to cure the breaches within a period of 30 days and submitted that Embifi was therefore put to prior notice before the arbitration was invoked.

Analysis and Findings

The Court noted that upon receipt of the notice, Embifi had not raised any objection regarding non-compliance with the pre-arbitration procedure under Clause 21 of the Agreement and had instead proceeded to nominate a sole arbitrator for adjudication of the disputes. The Court observed that it was only at the stage of opposing the application under Section 11(6) of the Act that Embifi sought to raise the objection that arbitration procedure was not followed. The Court found this to be a deliberate attempt to create hurdles in the constitution of the Arbitral Tribunal.

The Court further observed that when the application was first called out in the morning session, Embifi was called upon to take instructions as to whether it was willing to go for arbitration by constitution of an Arbitral Tribunal of a sole arbitrator. However when the application was called out in the second session, Embifi insisted that unless the agreed procedure under the Agreement was followed by issuance of a dispute notice, appointment of an arbitrator could not be done. The Court found that despite having agreed for arbitration and in fact suggesting the name of an arbitrator in response to the notice, Embifi had taken a volte face and was now questioning the maintainability of the application, and deprecated such conduct. Considering this, the Court found no merit in the objection raised on behalf of Embifi and rejected it.

Verdict

The Court appointed a sole arbitrator to adjudicate upon the disputes between the parties arising out of the Agreement.

Conclusion

The order in Fintree Finance Private Ltd. v. Embifi Global Services Private Limited reinforces that a party which engages with the arbitration process by nominating an arbitrator, in response to a Section 21 notice cannot subsequently turn around and oppose the maintainability of an application under Section 11(6) of the Act on the ground that the pre-arbitration procedure was

not followed. The Court's deprecation of Embifi's conduct reflects the broader judicial policy of discouraging dilatory tactics that obstruct the constitution of an Arbitral Tribunal and thereby frustrate the object of expeditious resolution of disputes through arbitration.